In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 496

ESTELLE T. GRISWOLD
AND
C. LEE BUXTON,
Appellants,
vs.
STATE OF CONNECTICUT,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF ERRORS OF CONNECTICUT

JURISDICTIONAL STATEMENT

FOWLER V. HARPER,
127 Wall Street,
New Haven, Connecticut,
Attorney for Appellants.

THE MACK CO., NORTH HAVEN, CONN.

SUBJECT INDEX

TABLE OF CITATIONS

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No.

ESTELLE T. GRISWOLD
AND
C. LEE BUXTON,
Appellants,
vs.
STATE OF CONNECTICUT,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF ERRORS OF CONNECTICUT

JURISDICTIONAL STATEMENT

Appellants Griswold and Buxton appeal from the judgment of the Supreme Court of Errors of Connecticut entered on April 28, 1964, affirming the judgment of the Circuit Court, Appellate Division which had affirmed the conviction of appellants by the Circuit Court, Sixth District. Appellants submit this statement to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal in that there are substantial federal questions involved.

OPINION BELOW

The opinion of the Supreme Court of Errors of Connecticut rendered May 12, 1964, is reported in 25 Conn. L.J. #47, p. 5, 200 A.2d 479.

The opinion of the Supreme Court of Errors of Connecticut is set forth in the Appendix to this Statement.

JURISDICTION

On November 10, 1961, Julius Maretz, Prosecuting Attorney, Circuit Court of Connecticut, Sixth Circuit, filed Informations and Warrants against appellants, alleging violation of Sections 53-32 and 54-196 of the General Statutes of Connecticut, Revision of 1958, pursuant to which appellants were taken into custody and tried for such alleged violations. Appellants demurred to the Informations for the reason that the said statutes were in violation of the Constitution of the United States and the State of Connecticut both on their face and as applied to them.

The demurrers were overruled and the appellants, after hearing, were found guilty and sentenced to pay a fine of one hundred dollars ($100.00) each on January 2, 1962.

After stipulation by the parties for joint appeals, and an order by the court therefor, on January 10, 1962, assignment of errors was made by appellants and an appeal taken to the Appellate Division of the Circuit Court which affirmed the judgment of the Circuit Court, Sixth Circuit in an opinion rendered on January 7, 1963.

The Appellate Division certified two questions and appellants on January 31, 1963, petitioned for certification of additional questions by the Supreme Court of Errors for review of the judgments below which was granted by that court on

February 19, 1963. Thereafter on April 28, 1964 the Supreme Court of Errors of Connecticut affirmed the judgment of the Circuit Court, Appellate Division. Stay of execution was ordered on May 20, 1964.

Notice of appeal to the Supreme Court of the United States was filed with the Supreme Court of Errors of Connecticut on July 22, 1964.

This appeal is authorized by and taken pursuant to 28 U.S.C. Section 1257(2). The court below held that the Sections 54-196 and 53-32 of the General Statutes of Connecticut, 1958 Revision were in conflict with the Constitution of the United States, neither on their face nor as applied to these appellants.

QUESTIONS PRESENTED

Whether Section 53-32, General Statutes of Connecticut, Revision of 1958 in connection with Section 54-196 of said statutes deprive these appellants and their patients of their liberty without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States, whether they deprive these appellants of their property and deny to them their rights to freedom of speech and the communication of ideas of great social significance as protected by the First and Fourteenth Amendments, and whether Section 53-32 is unconstitutional on its face and as applied to married patients of these appellants and other married couples because it is an unreasonable and unjustifiable invasion of their privacy contrary to the Fourth, Ninth and Fourteenth Amendments to the Constitution of the United States.

STATUTES INVOLVED

Statutes involved in this case are Section 53-32 and 54-196, General Statutes of Connecticut, Revision of 1958.

Section 53-32, General Statutes of Connecticut, Revision of 1958:

> "Use of drugs or instruments to prevent conception. Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or both fined and imprisoned."

Section 54-196, General Statutes of Connecticut, Revision of 1958:

> "Accessories. Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

STATEMENT OF THE CASE

Appellant Griswold was and is the Executive Director of the Planned Parenthood League of Connecticut and of the Center which it established in New Haven for the purpose of making available information and materials under medical supervision to prevent conception for those married women for whom the doctors in charge prescribed them. Appellant Buxton was the Medical Director of the aforesaid Center and is a registered licensed physician and a specialist in obstetrics and gynecology. He was formerly a professor in these specialties at the Columbia-Presbyterian Medical Center in New York and at present is professor and chariman, Department of Obstetrics and Gynecology at Yale University School of Medicine and the Grace New Haven Community Hospital.

Appellants were arrested and charged under Sections 54-196 as being accessories to violations of Section 53-32 Revised Statutes of Connecticut. Three patients testified that they went to the Center to seek medical advice, that they asked for and received materials in the nature of instruments and drugs to prevent conception, instructions from these appellants as to their proper use and that they returned to their homes, followed the instructions and used the said articles. Appellants were convicted over their objection that said Section 53-32 was in violation of the Constitution of the United States on its face, and in connection with Section 54-196, was in violation of the Constitution on its face and as applied to these appellants and their patients on the Constitutional grounds mentioned above. Since the arrest and conviction of these appellants, the Center established to dispense advice, information, materials and instructions under the supervision of physicians to married women for the purpose of preventing conception has ceased to function as such. Thus the women who, perhaps, most need this type of medical care are deprived of it, as suggested by Mr. Justice Brennan in his ~~dissent~~ in *Poe* vs. *Ullman*, 367 U.S. 497 (1961). See *Rainwater*, And the Poor Get Children, 49 ff. (1960).

THE QUESTIONS ARE SUBSTANTIAL

These cases raise fundamental questions of personal liberty and property rights which have never been passed upon by this Court. The statutes challenged regulate the practice of medicine in an arbitrary, unreasonable and unscientific manner which seriously restricts physicians in the practice of their profession and jeopardizes the lives and health of their patients. They also raise questions as to whether either or both appellants can be punished as accessories to the violation of a statute claimed by them to be unconstitutional as to their patients thus involving the issue of the constitutionality of Section 53-32 as

invading the privacy and liberty of the married women who went to the clinic to obtain medical aid, assistance and materials for the purpose of preventing conception and who thereafter followed the advice and used the materials thus obtained.

POINT I

These laws deprive appellants Buxton and Griswold of rights under the First and Fourteenth Amendments to the Constitution of the United States.

1. "The right of the Doctor to advise his patients according to his best lights seems so obviously within First Amendment rights as to need no extended discussion." Mr. Justice Douglas in *Poe* vs. *Ullman*, 367 U.S. 497 (1961). This Court in *Kingsley Pictures* vs. *Regents*, 360 U.S. 64 (1959) held unconstitutional New York's ban on the film of "Lady Chatterly's Lover" and in respect to the contention of the state that it could constitutionally forbid the advocacy of conduct (in this instance adultery) which it could validly make a crime, the Court declared, through Mr. Justice Stuart, "Its (First Amendment) guarantee is not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single-tax. And in the realm of ideas it protects expression which is eloquent no less than that which is convincing." (Pages 688-689) The mere fact that the advice given is unorthodox or controversial or even hateful to the prevailing climate of opinion is no basis for its being forbidden by the state, if it has, as Mr. Justice Brennan has written, "the slightest redeeming social importance." *Roth* vs. *United States*, 354 U.S. 476, 484 (1957). Certainly, medical advice approved by those in the scientific world best qualified to judge cannot be curtailed by the state in the light of the First Amendment to the Consti-

tution and its applicability to the states under the Fourteenth Amendment.

First Amendment rights occupy a preferred position in our system of constitutional liberties. Whether this is to be interpreted as a presumption of unconstitutionality of legislation restricting speech or as diluting the burden of overcoming whatever presumption of constitutionality is applicable, is immaterial. The evidence to dissipate any presumption of constitutionality is overwhelming. To characterize the advice given by these appellants to the married women and others who visited the New Haven Clinic as of "the slightest redeeming social importance" is an understatement so gross as to be utterly misleading. The advice here prohibited has, in fact, importance of the highest degree to the women of Connecticut, to the nation and, indeed, to the world. Attention of the Court will be directed here only to the most important values of the prohibited advice, all of which appellants are prepared to document fully.

(a) Use of effective contraceptive agencies are frequently necessary to the health of married women and occasionally to life. Under many types of circumstance pregnancy affects the mother's health adversely and childbirth threatens death.

(b) Spacing of children is generally recognized as not only justifiable but highly desirable for socio-economic reasons as well as for the health of mother and child. To require women in underprivileged economic and social groups to have children or renounce sexual relations with their husbands creates and perpetuates poverty and conditions of disease and delinquency.

(c) It is the opinion of qualified observers that lack of access to contraceptives leads to unwanted pregnan-

cies and substantially increases the frequency of illegal abortions.

(d) It is the opinion of qualified observers that an increase in the use of effective contraceptive agencies substantially reduces the frequency of illigitimate births.

(e) It is the opinion of qualified observers that the birth of unwanted children leads to their neglect, delinquency and to serious emotional disturbances.

(f) The use of effective contraceptive agencies avoids the risk of failure of less effective methods such as the rhythm system and avoids the long recognized ill effects or prolonged or permanent abstinence from marital relations.

(g) The work of these appellants in advising and giving instructions for the use of effective contraceptive agencies, is in line with and, indeed, promotes national policy as evidenced by the extensive research programs of the Public Health Service to develop the most effective contraceptive agencies and the policy of making available technical assistance, as a part of our foreign aid program, to the other nations seeking methods of population control. A federal program to abolish poverty has begun. But to fight poverty without birth control is to fight with one hand tied behind the back.

(h) The work of these appellants will contribute to the reduction of the increased rate of population growth in the United States. Unless effectively controlled, within a half century, population in this country will rise from its present 190,000,000 to 1,000,000,000.

2. Both Dr. Buxton and Mrs. Griswold have a right to make a living which may not be unreasonably restricted by the state. Both are advocating matters long endorsed by the medical profession. As early as June 1937 the American Medical Association unanimously adopted the report of its committee to study contraceptive practices, recommending teaching contraception in medical schools, investigation of materials and methods, and clarification to physicians of their legal rights in this field. Among the many medical organizations which have since passed resolutions in favor of birth control by the use of devices most likely to be effective are: Section of Obstetrics, Gynecology and Abdominal Surgery of the American Medical Association; American Gynecological Association; American Neurological Association; American Medical Women's National Association; National Committee on Maternal Health; and a number of state medical societies including those of Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Maine, Michigan, Minnesota, North Carolina, Southern Oregon, South Carolina, Tennessee, Texas, and West Virginia. Several states are distributing contraceptive instructions and materials as part of their public health or welfare programs.

It has long since been established by physicians that the vaginal diaphragm and the condom and other mechanical or chemical devices as well as recently developed oral contraceptives and the intrauterine coil, all made illegal by the Connecticut law, are by far the most effective contraceptive agencies. See *Guttmacher*, Human Fertility, Volume 12, Number 1, March 1947; *Tietze*, Journal of the American Medical Association, Volume 140, Page 1265 (1949); *Holland*, British Obstetric and Gynecological Practice, Page 756-757 (1958); *Novak & Novak*, Text Book of Gynecology, Page 607 (1956). The State of Connecticut, by depriving Doctor Buxton of this

most valuable attribute of his property and liberty in his profession, namely, the right to advise his patients according to his scientific training, takes his property unreasonably and without due process of law. See *Meyer* vs. *Nebraska*, 262 U.S. 390, 399 (1923); *Burns Baking Company* vs. *Bryand*, 264 U.S. 504, 513 (1924); *England* vs. *Louisiana State Board of Medical Examiners*, 259 F.2d 626, 627 (1958). Of course, the state may impose reasonable regulations on the practice of medicine, but a law which permits a doctor to abort his patient to save her life but prohibits advice for the use of the most effective means of preventing pregnancy and death has a negligible claim to reasonableness.

POINT II

Neither appellant Griswold nor Buxton can be guilty as accessories to crimes which were never committed. In *Poe* vs. *Ullman*, 367 U.S. 497 (1961), Mr. Justice Harlan, concluding his dissent, said: "I would adjudicate these appeals and hold this statute (Section 53-32) unconstitutional insofar as it purports to make criminal the conduct contemplated by these married women. It follows that if their conduct cannot be a crime, appellant Buxton cannot be an accomplice thereto."

If it be argued that appellants are invoking the constitutional rights of others, *viz.* the three married women who testified that they sought, obtained and used the contraceptive advice and materials, it is sufficient to answer that this is one of the many situations in which such procedure is permissible. Appellants show that they have suffered direct and immediate injury. They have been prosecuted, convicted and sentenced as accessories. As such they were in the very words of Section 54-196, "prosecuted and punished as if [they] were the principal offenders."

In *Barrows* vs. *Jackson*, 346 U.S. 249 (1935), this Court held that Respondent could not be held liable in a state court for failure to honor restrictive covenant in the sale of land. Respondent was permitted to plead the constitutional rights of non-Caucasians, "unidentified, but identifiable," because he would himself sustain immediate injury and the constitutional rights of "non-Caucasians" impaired by a verdict against him. "Under the peculiar circumstances of this case," said the Court, "we believe the reasons which underlie our rule denying standing to raise another's rights . . . are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained." *Ibid.*, 257. The rights of the married women who are alleged to have committed the crime to which appellants have been convicted as accessories are certainly, as will be shown, as "fundamental" as those involved in the *Barrows* case and the injury to appellants (criminal conviction) more serious than a money judgment for damages. See also *Pierce* vs. *Society of Sisters*, 268 U.S. 510 (1925); *Joint Anti-Fascist Refugee Committee* vs. *McGrath*, 341 U.S. 123 (1951), Frankfurter concurring and Jackson concurring.

Any different result in this case would be intolerable. It would mean that the State of Connecticut could, as indeed it has, indirectly but indefinitely enforce an unconstitutional law and deprive married women of necessary medical care by prosecuting only alleged aceessories.

The following points have been summarized in a valuable article in a recent law review where the author finds that this Court appears to be influenced on "standing" problems by four factors: (1) the interest of the party litigant, (2) the nature of the constitutional right asserted, (3) the relationship between the party litigant and the third parties whose constitutional rights are invoked, and (4) the practicability of asser-

tion of such rights by third parties in an independent action. *Sedler,* Standing to Assert Constitutional *Jus Tertii,* 71 Yale L.J. 599, 627 (1962).

The application of this analysis to the present case clearly points to the right of these appellants to assert the constitutional rights of the women. In the first place, they have standing in their own right. Sections 53-32 barring "use" in connection with Sections 54-196, the accessory statute, deprives them of rights under the First and Fourteenth Amendments. Unlike the appellant in *Tileston* vs. *Ullman,* 129 Conn. 84, 318 U.S. 44 (1943), these appellants are asserting rights personal to them. Again, the right of the persons not parties is one highest in the heirarchy of constitutional values — "the right most valued by civilized man." The relationship between appellants and their patients is an important professional one.

Finally and, perhaps, most important, as a practical matter, the rights of third parties will not be protected otherwise than through a criminal proceeding of this type. Mr. Justice Brennan in *United States* vs. *Raines,* 362 U.S. 17, 22 (1960), explained that "where as a result of the very litigation in question, the constitutional rights of one not a party would be impaired, and where he has no effective way to preserve them himself, the Court may consider those rights as before it." So too, Justice Harlan in *N.A.A.C.P.* vs. *Alabama,* 357 U.S. 49 (1958): "To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. * * * The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court."

It would be hard to imagine a situation to which the above principle is more applicable. It is, as a practical matter im-

possible for the women who want and need the advice and care afforded by these appellants at the closed Clinic to get their constitutional claims directly before this Court for vindication. The recent decision under the Fourth and Fourteenth Amendments (*Mapp* vs. *Ohio*, 367 U.S. 643 (1961)) and under the Fifth on self-incrimination (*Malloy* vs. *Hogan*, 84 Sp. Ct. 1487 (1964)) together with the husband-wife testimonial privilege, make successful prosecution for "use" under Section 53-32 of the Connecticut statutes highly improbable. Thus, these women cannot obtain the relief and medical care to which they are entitled unless their right thereto is vindicated in a prosecution under Section 53-32 in connection with Section 54-196, as in the present case.

POINT III

The law forbidding the use of contraceptive devices deprives married women in Connecticut of their liberty and their privacy, as protected by the Fourth, Fourteenth and Ninth Amendments to the Constitution of the United States.

1. If, as was declared in *Meyer* vs. *Nebraska*, 262 U.S. 390, 391 (1923), the term "liberty" includes freedom "to marry, establish a home, and bring up children," it would seem necessarily to include the freedom to limit the number of children to those a married couple feel that they can bring up in decency and in health. How they arrive at a decision on this matter and the preventive means which they adopt is a matter of personal and intimate privacy. This law "reaches into intimacies of the marriage relationship," wrote Mr. Justice Douglas in *Poe* vs. *Ullman*, 367 U.S. 497 (1961). "If we imagine the regime of full enforcement of the law," he continued, "in the manner of Anthony Comstock, we would reach the point where search warrants issued and officers appeared in bedrooms to find out what went on. It is said that this is not that case.

And so it is not. But when the state makes 'use' a crime and applies the criminal sanction to man and wife, the state has entered the innermost sanctum of the home. If it can make this law, it can enforce it. • • • This is an invasion of the privacy that is implicit in a free society." Mr. Justice Harlan stated the proposition with equal forcefulness in his opinion in *Poe*. "This enactment," he wrote, "involves what, by common understanding throughout the English speaking world, must be granted to be a most fundamental aspect of 'liberty', the privacy of the home in its most basic sense • • • ."

2. In 1961 this Court decided that violation of the Fourth Amendment guarantee against unreasonable searches and seizures in a case involving the privacy of the home was forbidden to the states by the Fourteenth Amendment. *Mapp* vs. *Ohio*, 367 U.S. 643 (1961).

It is true that the Fourth Amendment thus made applicable to the states, with rare exceptions, forbids the physical entrance into the home by police officers unless a warrant has been issued by a magistrate on "probable cause". But as Mr. Justice Harlan pointed out in his opinion in *Poe* vs. *Ullman*, "It would surely be an extreme instance of sacrificing substance to form were it to be held that the constitutional principle of privacy against arbitrary official intrusion comprehends only physical invasions by the police. • • • But to my mind such a distinction is so insubstantial as to be captious: If the physical curtilage of the home is protected, it is surely as a result of solicitude to protect the privacies of the life within. Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its pre-eminence as the seat of family life and the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted constitutional right."

3. The Ninth Amendment to the Constitution provides that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." It is submitted that this Amendment, as directly applicable to the States or as made so by the Fourteenth, should be interpreted to protect aspects of what has been called the rights of privacy as a protection additional to that afforded by other Amendments. The framers of the Bill of Rights took care to provide protection against the two physical types of invasion of privacy with which they were most familiar, namely, the notorious Writs of Assistance by which the King's Officers ransacked at large through private homes in search of contraband imports, and the quartering of soldiers in private homes without the consent of the owner. But with the "progress" of time, the ingenuity of man has discovered many other and more subtle ways of harrassing his neighbor. Even before 1884, the government of Connecticut invaded the bedroom of married couples, making the State, literally, a "naked society." The founding fathers foresaw that this could happen and took care to provide against it in the Ninth Amendment. Certainly rights so closely akin to those which concerned the fathers should be included in the "rights retained by the people."

Indeed, the so-called "right of privacy" is a broad general term which in fact includes a number of "rights" or "interests." Actually one may regard the religious guarantees of the First Amendment as protecting an aspect of what could be called "privacy", that is, freedom of conscience and freedom from compelled religious conformity, such as saluting the flag in public schools or mumbling a prayer dictated by the schools. This is an important area which, as Justice Douglas has declared, "the First Amendment fences off from government." *Sherbert* vs. *Verner*, 374 U.S. 398, 412 (1963). There is the interest in seclusion or what Justice Brandeis called the "right

to be let alone." There is the interest in freedom from wire tapping or other types of eavesdropping. The privilege against self-incrimination of the Fifth Amendment, in connection with the Fourth, as they run "almost into each other" protects another privacy interest. There is the interest that one has in his life history or in his likeness. This interest is quite different from the right to seclusion. It is what, perhaps, Judge Frank called the "right to publicity" rather than the "right to privacy." Then, too, there is the interest in freedom from disagreeable noises and odors which has long been recognized in the law of nuisance.

Most if not all of these so-called aspects of privacy have been protected by the common law, some of them for centuries. The rights which the three women who obtained advice from Dr. Buxton and his assistant, Mrs. Griswold, as involved in this case are certainly closely akin to other aspects of privacy specifically recognized in the Constitution and are, in many respects, far more important; namely, freedom from coerced marital conformity in the bedroom. There is State action as much and as effective when it requires private citizens to deny constitutional rights to other citizens as when it acts directly to impinge on those rights. The Ninth Amendment to the Constitution certainly was intended to protect some rights of the people. What more appropriate than the freedom here claimed for these women? In referring to the opinion of Lord Camden in what Mr. Justice Bradley called a landmark of English liberty and one on which the Fourth Amendment is based, the Justice declared that "the principles laid down in this opinion affect the very essence of the constitutional liberty and security. They reach farther than the concrete form of the case then before the Court with its adventitious circumstances; [the case was an action for trespass against several of the King's messengers, reported in 19 Howell's State Trials 1029, (1765)]

they apply to all invasions on the part of the Government and its employees of the sanctity of a man's home and privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property where that right has never been forfeited by his conviction of some public offense, — it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment." *Boyd* vs. *United States*, 116 U.S. 616, 630 (1855).

The "personal liberty" in the sense of the "right to be let alone" is perhaps the most important of all — "the right most valued by civilized men." "It is quite true," Dean Griswold has written, "that this phrase cannot be found in the Constitution. But it is implicit in many of the provisions of the Constitution and in the philosophic background out of which the Constitution was formulated. • • • The right to be let alone is the underlying theme of the Bill of Rights." *Griswold*, The Right to be Let Alone, 55 N.W.U.L. Rev. 216-217 (1960). It is submitted that the invasion of the interest of married spouses in the sanctity and privacy of their marital relations, involved in this Connecticut statute, is a violation of precisely the kind of "right" which the Ninth Amendment was intended to secure.

Professor Redlich, in an important article has pointed out that in interpreting both the Ninth and Tenth Amendments, "the textual standard should be the entire Constitution." "The original Constitution," he wrote, "and its amendments project through the ages the image of a free and open society. The Ninth and Tenth Amendments recognized — at the very outset of our national experience — that it was impossible to fill in every detail of this image. For that reason certain rights were reserved to the people. The language and history of the

two amendments indicate that the rights reserved were to be of a nature comparable to the rights enumerated." *Redlich*, Are There Certain Rights • • • Retained by the People, 37 N.Y.U.L. Rev. 787, 810 (1962). Certainly the aspects of privacy protected by the First, Third, Fourth and Fifth (privilege against self-incrimination) are comparable to the rights of the married women who sought medical instruction from these appellants.

POINT IV

These laws violate the Fourteenth Amendment rights of all parties concerned in that the restrictions are unreasonable because every justification for them under the police power of the state fails.

1. These laws are not narrowly drawn. They are not restricted to their presumed purpose which is to prevent meritricious relations between unmarried persons. They are also applicable to married spouses and thus they "burn down the house to roast the pig." *Butler* vs. *Michigan*, 352 U.S. 380 (1956).

2. The laws do not attain the desired results of preventing licentious relations between unmarried persons since the forbidden contraceptive devices may be obtained in practically all drug stores in the state. (See opinion by Justice Frankfurter in *Poe* vs. *Ullman, supra.*) It is assumed that they are thus available for the prevention of disease. See *Commonwealth* vs. *Corbitt*, 307 Massachusetts 608, 29 N.E. 2d 150 (1940), cited with apparent approval in *Tileston* vs. *Ullman*, 128 Conn. 84, 91 (1942).

CONCLUSION

The issues in these cases are of great importance to these appellants and their patients and of far-reaching importance to the medical profession. It is submitted that the First, Fourth, Ninth and Fourteenth Amendments to the Constitution forbid the State of Connecticut to enact laws which fly in the face of both common sense and science and which unreasonably and arbitrarily restrict physicians and clinic workers from giving and their patients from receiving the best medical advice and care available.

Respectfully submitted,

FOWLER V. HARPER,
127 Wall Street,
New Haven, Connecticut.

APPENDIX

Supreme Court of Errors
NOVEMBER TERM, 1963

STATE OF CONNECTICUT *vs.* ESTELLE T. GRISWOLD
STATE OF CONNECTICUT *vs.* C. LEE BUXTON

Informations charging the defendants with the crime of assisting and abetting the use of drugs, medicinal articles and instruments for the purpose of preventing conception, brought to the Circuit Court in the sixth circuit and tried to the court, Lacey, J.; judgment of guilty in each case which, on appeal, the Appellate Division of the Circuit Court affirmed; from its judgment the defendants, on the granting of certification, appealed to this court. No error.

Catherine G. Roraback, for the appellants (defendants).

Julius Maretz, prosecuting attorney, and Joseph B. Clark, assistant prosecuting attorney, for the appellee (state).

COMLEY, J. After a trial to the court in the Circuit Court for the sixth circuit at New Haven, the defendants were found guilty as accessories to certain violations of General Statutes § 53-32, which appears with the statute on accessories in the footnote.[1] The principal offenders were not prosecuted. The

---

[1] "Sec. 53-32. *Use of Drugs or Instruments to Prevent Conception.* Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

"Sec. 54-196. *Accessories.* Any person who assists, abets, counsels, cause, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

convictions of the accessories were sustained by the Appellate Division of the Circuit Court, which, at the same time, certified that there were substantial questions of law which should be reviewed by this court. These questions, together with others certified by us, are now before us on this appeal.

There is no significant dispute about the facts. In November, 1961, The Planned Parenthood League of Connecticut occupied offices at 79 Trumbull Street in New Haven. For ten days during that month the league operated a planned parenthood center in the same building. The defendant Estelle T. Griswold is the salaried executive director of the league and served as acting director of the center. The other defendant, C. Lee Buxton a physician, who has specialized in the fields of gynecology and obstetrics, was the medical director of the center. The purpose of the center was to provide information, instruction and medical advice to married persons concerning various means of preventing conception. In addition, patients were furnished with various contraceptive devices, drugs or materials. A fee, measured by ability to pay, was collected from the patient. At the trial, three married women from New Haven testified that they had visited the center, had received advice, instruction and certain contraceptive devices and materials from either or both of the defendants and had used these devices and materials in subsequent marital relations with their husbands. Upon these facts, there is no doubt that, within the meaning of § 54-196 of the General Statutes, the defendants did aid, abet and counsel married women in the commission of an offense under § 53-32.

Section 53-32, enacted in 1879 (Public Acts 1879 c. 78), has been under attack in this court on four different occasions in the past twenty-four years. *State* vs. *Nelson*, 126 Conn. 412, 11 A.2d 856; *Tileston* vs. *Ullman*, 129 Conn. 84, 26 A.2d 582; *Buxton* vs. *Ullman*, 147 Conn. 48, 156 A.2d 508; *Trubek*

vs. *Ullman*, 147 Conn. 633, 165 A.2d 158. An examination of these cases discloses that every attack now made on the statute, standing by itself or when considered in combination with § 54-196, has been made and rejected in one or more of these cases, the last two having been decided within the past five years. The defendants virtually concede this fact in the closing paragraph of their brief where they urge this court "to consider whether or not in the light of the facts of this case, the current developments in medical, social and religious thought in this area, and the present conditions of American and Connecticut life, modification of the prior opinions of this Court might not 'serve justice better.'." A-427 Rec. & Briefs, 616. In rejecting this claim, we adhere to the principle that courts may not interfere with the exercise by a state of the police power to conserve the public safety and welfare, including health and morals, if the law has a real and substantial relation to the accomplishment of those objects. The legislature is primarily the judge of the regulations required to that end, and its police statutes may be declared unconstitutional only when they are arbitrary or unreasonable attempts to exercise its authority in the public interest. See *State* vs. *Nelson*, *supra*, 422, and cases cited in *Buxton* vs. *Ullman*, *supra*, 59. Furthermore, as pointed out in *Buxton* vs. *Ullman*, *supra*, 56-59, the General Assembly has not recognized that the interest of the general public calls for the repeal or modification of the statute as heretofore construed by us. It is our conclusion that the conviction of the defendants was not an invasion of their constitutional rights.

The rulings on evidence and on the motion to correct the finding, of which the defendants complain, do not merit discussion.

There is no error.

In this opinion the other judges concurred.

STATE OF CONNECTICUT

At a Supreme Court of Errors held at Hartford on the first Tuesday of November A D 1963

Present HON. JOHN H. KING Chief Justice

HON. JAMES E. MURPHY
HON. WILLIAM J. SHEA
HON. HOWARD W. ALCORN
HON. JOHN M. COMLEY
} Associate Judges

STATE OF CONNECTICUT
vs.
ESTELLE T. GRISWOLD, of New Haven, Connecticut
and
C. LEE BUXTON, of New Haven, Connecticut
} On Appeal from the Judgment of the Appellate Division of the Circuit Court.

JUDGMENT

This appeal by the defendants claiming error in the process, record and judgment, and in the proceedings and decisions of the Circuit Court, 6th District on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the Circuit Court, 6th District, in New Haven County, on January 12, 1962 and came to the Appellate Division of the Circuit Court on October 9, 1962 when the parties appeared and were fully heard by said Appellate Division of the Circuit Court and thence to January 7, 1963 when said Appellate Division of the Circuit Court found no Error in the decision of the Circuit Court, 6th District, thence to January 31, 1963 when the defendants filed a Petition for certification by the Supreme Court

of Errors and a statement of the case, thence to February 19, 1963 when said Petition was granted and said case came to this Court at its term held at Hartford, on the first Tuesday in February, A.D. 1963, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Appellate Division of the Circuit Court there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellants its cost taxed at $.....

Date of judgment, April 28, 1964.

By the Court,
/s/ EDWARD HORWITZ,
Clerk

STATE OF CONNECTICUT

Supreme Court of Errors

No. 5485

STATE OF CONNECTICUT
vs.
ESTELLE T. GRISWOLD
STATE OF CONNECTICUT
vs.
C. LEE BUXTON

APPLICATION FOR A STAY OF EXECUTION

To the HONORABLE JOHN HAMILTON KING, Chief Justice of the State of Connecticut:

Estelle T. Griswold and C. Lee Buxton, the defendants and appellants in the foregoing matter, respectfully represent:

1. On May 12, 1964, the Supreme Court of Errors of the State of Connecticut issued its decision and judgment herein, finding no error in the judgments below, under which judgments fines of $100.00 are to be imposed upon each of the defendants.

2. An appeal by the defendants from the decision of the Supreme Court of Errors will be taken to the Supreme Court of the United States within the time limited by the rules of said Court.

3. Such appeal will be taken in good faith and not for purposes of delay.

4. Execution upon the sentences herein is stayed only to May 22, 1964.

WHEREFORE the defendants, Estelle T. Griswold and C. Lee Buxton, move for a stay of execution of the sentences imposed herein to a date thirty days following the final decision of the Supreme Court of the United States upon the appeal to be taken by them to such Court from the decision of the Supreme Court of Errors of this State.

At New Haven, Connecticut, this 18th day of May, 1964.

The Defendants, ESTELLE T. GRISWOLD
and C. LEE BUXTON,
By CATHERINE G. RORABACK
Their Attorney

The undersigned, counsel for the State of Connecticut herein, have no objection to the granting of the foregoing application.

JOSEPH B. CLARK
Assistant Prosecuting Attorney
Circuit Court of Connecticut,
Sixth Circuit

ORDER

The foregoing application having been presented, it is hereby ORDERED that execution of the sentences imposed upon the defendants by the Circuit Court of Connecticut, Sixth Circuit, be and they hereby are stayed to a date thirty days following the issuance of the final decision of the Supreme Court of the United States upon the appeal to be taken by the defendants to such Court from the decision of the Supreme Court of Errors of the State of Connecticut issued on May 12, 1964.

At Hartford, Connecticut, this 20th day of May, 1964.

/s/ JOHN H. KING
Chief Justice of the
State of Connecticut